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Editorial Office: Faculty of Sharia, Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri Purwokerto, Indonesia, Jalan Jend. A. Yani No. 40 A Purwokerto Jawa Tengah 531226 Indonesia
Phone: +62281-635624 Fax: +62281- 636653
E-mail: volksgeist@uinsaizu.ac.id
Website: <http://ejournal.uinsaizu.ac.id/index.php/volksgeist>

The Establishment of a New Autonomous Region of Papua in State Administrative Law Perspective

Article	Abstract
<p>Author Jauhar Nashrullah^{1*}, Georges Olemanu Lohalo².</p> <p>¹ Faculty of Law, Universitas Islam Indonesia, Indonesia ² University of Kinshasa, Democratic Republic of Congo</p> <p>Corresponding Author: *Jauhar Nashrullah, <i>Email:</i> jauharnash@gmail.com</p> <p>Data: Received: Sept 24, 2022; Accepted: Des 14, 2022; Published: Des 17, 2002.</p> <p>DOI: doi.org/10.24090/volksgeist.v5i2.6901</p>	<p>The presence of four new autonomous regions (DOB) in Papua completes the number of provinces in Indonesia to 38. This study examines the formation of the new autonomous region in Papua from the perspective of state administrative law. This type of research is juridical normative with a statutory, concept, and case approach. The study results show Law Number 2 of 2021, which eliminates preparation areas, even though the preparation areas are crucial in forming a new autonomous region. With asymmetric decentralization, special autonomy will be imposed on the new autonomous regions in Papua, which have specificity regarding authority, finance, and institutions. However, there are several notes, such as the Governor and DPRD formed from the results of the 2024 simultaneous elections & regional election; as a result, the acting governor is equipped with crucial authority that is prone to conflict of interest. This article also provides ideas and recommendations regarding the formation of the Papua new autonomous region as follows: 1) The implementation of primary areas in the process of forming the Papua new autonomous region; 2) The government immediately issued government regulation of Desartada; 3) Maximizing the participation of indigenous Papuans in the establishment of the new autonomous region in Papua.</p> <p>Keywords: <i>Regional expansion; new autonomous region; state administrative law.</i></p>

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INTRODUCTION

The reformation at the end of the 20th century in Indonesia brought implications for changes in society and the state. In terms of constitutionality, after experiencing the bitter bitterness of authoritarian and centralistic new-order governments, the end of the reform period encouraged widespread regional autonomy in Indonesia. Regional autonomy enables changes in government administration in the regions, both structural, functional, and cultural. Regional autonomy provides hope and opportunity for regions to develop creativity, innovation, participation of local communities, and local potential autonomously.¹

¹ Andi Azikin, "Makna Otonomi Daerah Dalam Penyelenggaraan Pemerintahan Daerah Pada Era Reformasi," *Jurnal Manajemen Pemerintahan* 5, No. 1 (2018): 35–41.

Regional autonomy broadly carries the implications of a new autonomous region in Indonesia. At the end of the new order period, Indonesia had 27 provinces, but until 2012 it was recorded that Indonesia had 34 provinces. The number has not been added to the number of new districts/cities resulting from the expansion. The large wave of demands for territorial development in Indonesia is not only a consequence of regional autonomy. If drawn from the point of view of utility, in addition to a large geographical area being the logical reason for triggering the desire for territorial expansion, the formation of a new autonomous region will have implications for improving governance, and public services will also be increasingly optimal. In terms of efficiency, it is assumed that the smaller an administrative area is, the easier it is for services to be provided to its people, given that the distance between government offices as service centers and people's residences is getting closer. Local authorities can also better access local information or conditions and tailor services according to local people's preferences.²

However, the explosion of demands for expansion and the formation of a new autonomous region in Indonesia in its development presents problems. When viewed sociologically, the wave of demands for forming a new autonomous region is a 'panacea' for solving diseases in government administration. However, in 2008, the turmoil of problems caused by expansion began to appear. In 2008, the BPK examination of regional development concluded that regional growth in Indonesia had experienced various problems starting from the planning, implementation, and monitoring stages.³

In addition, there are many heralded narratives that regional expansion can bring more useful public services, and the range of control of government will be closer to the people. But in many cases, regional divisions are more elitist and pragmatic in nature which a few people carry out in the name of the interests of the people. In other words, expansion is only for the benefit of power-hungry elites.⁴ The study conducted by the National Legal Development Agency (BPHN) on the growth and merger of regions also gives an idea that, in reality, the development of yes the demands of the community in the formation/expansion of the region are triggered by political euphoria and on the wishes of the community to establish their regions sticking out due to lack of government attention. Whereas if understood in more depth, this can be caused by incompetence or lack of quality of service at the regional level of bureaucracy.⁵

Seeing that there are problems left out of the regional expansion policy, the government and parliament also realized the need for a moratorium on regional expansion. However, in its development, despite the moratorium policy on regional growth until 2025, which regulates the procedures for the formation, elimination, and merger of regions with the condition of the

² N Awortwi and AHJ (Bert) Helmsing, "In the Name of Bringing Services Closer to the People? Explaining the Creation of New Local Government Districts in Uganda," *International Review of Administrative Sciences* 80, No. 4 (2014): 766–88, <https://doi.org/10.1177/0020852314533455>.

³ Laporan Tim Analisa BPK-Biro Anggaran and Hendri Saporini, "Analisa Proses Administrasi Pemekaran Daerah Pada Departemen Dalam Negeri Dan Dewan Pertimbangan Otonomi Daerah (DPOD)" (Jakarta, n.d.).

⁴ Rahmat Suaib, "Urgensi Pemekaran Daerah Di Indonesia," *Jurnal Government of Archipelago (JGOA)* 1, No. 1 (2020): 34–44, <https://doi.org/10.52046/jgoa.v1i1.364>.

⁵ BPHN, "Pengkajian Hukum Tentang Pemekaran Dan Penggabungan Daerah," *Badan Pembinaan Hukum Nasional* (Jakarta, 2004). Accessed 15th of September 2022 from https://www.bphn.go.id/data/documents/pkj_pemekaran.pdf

construction of more tightened autonomous regions, until now there are still many regions in Indonesia that intend to form new autonomous regions.⁶

After experiencing several moratoriums on regional expansion, it was finally reopened in its development. This central government policy is carried out specifically for the Papua and West Papua regions. This plan started in 2021 when the government and the House of Representatives (DPR) agreed on a bill on the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province. In some of the new material included in the Act, the amendment provides a new mechanism regarding expansion in Papua.

The discourse on forming a new autonomous region in Papua turned out to be not just a thumbs up because, in 2022, the formation of the new autonomous region on Cendrawasih Earth officially became a reality. The ratification of the three new autonomous regions was approved by President Joko Widodo in July, with the passage of Law Number 14 of 2022 for the establishment of South Papua Province, Law Number 15 of 2022 for Central Papua Province, and Law Number 16 of 2022 for Central Mountain Papua Province. After ratifying the new 3 (three) new autonomous region regulations in Papua Province, the expansion plan was immediately implemented in the West Papua Province. The new province called Southwest Papua reduced the number of provinces in Indonesia to 38 after President and DPR passed the law on its formation.

But in reality, the establishment of new autonomous regions in Papua left some records of problems. The most fundamental problem is the provisions in Article 76, section (3) of the Papua Special Autonomy (Otsus) Law as a result of the changes. The article is controversial because eliminating the regional preparatory stage certainly gives rise to antinomy with existing laws and regulations and Desartada's plans. The central government's policy of eliminating the regional preparation stage for the new autonomous region in Papua is questionable in its essence or importance because it seems hasty and based on a pragmatic paradigm. This problem is in line with Zainal Arifin Mochtar's argument that "nowadays public policy in the form of a law is built on a paradigm that fits almost extinct, if not born out of interest, the policy is usually born out of regulatory pragmatism."⁷ Of course, the material in the Papua Special Autonomy Law resulting from changes, especially those related to the elimination of preparatory areas, is quite relevant if perceived by the above opinion.

In addition to regulatory issues, another problem was that many parties opposed the new autonomous region establishment policy in Papua. The Papuan People's Assembly (MRP) is the party that openly rejects the expansion of provinces in Cendrawasih Earth. MRP said that the Papuan people need more social, economic, health, and resolution improvements to frequent conflicts than regional expansion. Timotius Murib, as the Chairman of the MRP, considered that the draft of Law Number 2 of 2021 concerning Special Autonomy for Papua Province was a form of coercion of the will and was carried out without coordination or mechanism for absorbing the aspirations of the Papuan people.⁸ However, in its development, the pro-contra attitude of expansion does not only occur among the community but also includes the body of the MRP itself.

⁶ Bismar Arianto, Oksep Adhayanto, and Imam Yudhi Prastya, "Dinamika Pemekaran Daerah Di Kepulauan (Studi Penataan Pemekaran Daerah Di Kabupaten Lingga Tahun 2015-2025)," *Jurnal Selat* 3, No. 1 (2015): 333–40.

⁷ Zainal Arifin Mochtar, *Politik Hukum Pembentukan Undang-Undang* (Yogyakarta: EA Books, 2022). H 75.

⁸ Nobertus Arya Dwiaangga Martiar, "Majelis Rakyat Papua Meminta Pembahasan Pemekaran Papua Dihentikan," *Kompas*, April 14, 2022.

This indicates that the participant community's problem in forming a new autonomous region could be more optimal. Sociologically, participation is every citizen's right and obligation to uphold good governance.⁹ Moreover, the call for rejection emerged from the Papuan People's Assembly (MRP) institution. In the constitutional system, the MRP has crucial authority in implementing local government as mandated by the Papua Special Autonomy Law. MRP is a cultural representation of indigenous Papuans, which is authorized to protect the indigenous rights of Papuans based on respect for customs and culture, community empowerment, and strengthening religious harmony.¹⁰ Even Law Number 2 of 2021 is submitted to judicial review by the Constitutional Court of the Papuan People's Assembly (MRP).

Based on the background description previously outlined above, the article will seek to examine the establishment of a new autonomous region of Papua juridically using the point of view of state administrative law. Considering that in state administrative law, there are more or less two aspects of the study, namely how the rule of law on which the tools of state equipment carry out their duties and the rule of law that regulates the legal relationship of *rechtbetreking* between state administrative tools and their people.¹¹

Research on regional expansion or offending Papua has adorned many previous legal research treasures. However, this research has a new value because the issue of the formation of the Papuan new autonomous region is still alive today. In addition, it is hoped that this research will contribute to the treasures of legal analysis and stimulate further research on forming a new autonomous region and Papua.

RESEARCH METHODS

The research in this article uses normative juridical analysis, which refers to written legal norms and legal doctrines as stated in the form of regulations and the structure of legal literature.¹² The approach in this study uses the statute approach, conceptual approach, and case *approach*. All primary and secondary legal issues are collected through the study of literature. Primary legal materials include laws and regulations relevant to research and secondary materials in books, journals, reports, and electronic literature. These legal materials will later be analyzed in a descriptive if-qualitative manner. The analysis results will be poured into an illustrative description presented in this discussion.

⁹ Darmini Roza and Gokma Toni Parlindungan S, "Partisipasi Masyarakat Dalam Pembentukan Perundang-Undangan Untuk Mewujudkan Indonesia Sejahtera Dalam Pandangan Teori Negara Kesejahteraan," *JCH (Jurnal Cendekia Hukum)* 5, No. 1 (2019): 131, <https://doi.org/10.33760/jch.v5i1.185>.

¹⁰ A. Sakti R.S Rakia, "Special Authority of the Papuan People's Assembly against the Establishment of Perdasus," *JUSTISI: Faculty of Law, University of Muhammadiyah Sorong* 7, No. 1 (2021): 14–25, <https://doi.org/10.33506/js.v7i1.1168>.

¹¹ Wirda Eka Putri, Rahman, and Junindra Martua, "Peranan Peradilan Tata Usaha Negara Dalam Menciptakan Pemerintahan Yang Baik Ditinjau Dari Segi Hukum Administrasi Negara," *Jurnal Pionir LPPM Universitas Asahan* 5, No. 4 (2019): 236–43, <https://doi.org/10.36294/pionir.v5i4.928>.

¹² Ervina Dwi Indriati, Sary Ana, and Nunung Nugroho, "Philosophy Of Law And The Development Of Law As A Normative Legal Science," *International Journal of Educational Research & Social Sciences* 3, No. 1 (2022): 425–32, <https://doi.org/10.51601/ijersc.v3i1.293>.

ANALYSIS AND DISCUSSION

Establishment of New Autonomous Regions in Indonesia

The reform era opened a new page in the pattern of state administration, where regional autonomy marked Indonesia's breakthrough at the end of the 20th century. Reviewed sociologically and geographically, the concept of autonomy and decentralization of governmental authority is ideal for a country like Indonesia,¹³ considering that as an archipelagic country, Indonesia consists of islands, and its territory is vast. Because it chooses the form of a unitary state, the development of communities in all regions will be more evenly distributed if regional development is carried out with autonomy management as a system in the national development process.¹⁴ This was not the case during the New Order period; However, the regime of President Soeharto's administration achieved much economic stability development, and social welfare was uneven, especially in areas outside Java.

Regional autonomy and decentralization implications directly or indirectly encourage the explosion of regional expansion or the formation of new autonomous regions. This is basically due to the presence of Articles 18 and 18A of the 1945 NRI Constitution, which gives broad authority for regions to manage and run their governments autonomously, thus causing more and more desires of regions that want to break away from the parent region to form an autonomous regional government.¹⁵

Regional expansion is seen as a quick solution to unravel various community problems; considering each region is equipped with autonomous rights, the regional expansion will improve community welfare, where bureaucracy becomes more straightforward, and local resource management can be enjoyed and managed optimally by local parties. The incoming investment can also go directly to the regions; the government can explore the potential of the regions optimally; previously untouched areas are the top priority, especially for the progress of development to the village level.¹⁶

But what is often not realized is that sometimes expansion is just a pretext or means of carrying the interests of certain parties. Only now, many territorial expansions are based on residents' will but in the interests of parties who want to extract profits from an expansion. The result is that many regional expansions are considered to be failed or not optimal for the benefit of the community.

Rita Helbra Tenrini's study stated that the Ministry of Home Affairs evaluation showed that 78% of expansion areas failed during 1999-2012, and only about 22% were considered successful. The results of the Directorate General of Regional Autonomy's evaluation of 57 new autonomous regions provide an assessment of ineffective governance. These failures are also reasons for the moratorium policy on regional expansion. Some of the causes of loss in the implementation of regional expansion are 1) the Legislative plays more of a role in the proposed expansion; 2) The

¹³ Hariyanto Hariyanto, "Hubungan Kewenangan Antara Pemerintah Pusat Dan Pemerintah Daerah Berdasarkan Negara Kesatuan Republik Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, No. 2 (December 29, 2020): 99-115.

¹⁴ Lukman Santoso Az, *Hukum Pemerintahan Daerah (Mengenai Problematika Pemekaran Daerah Pasca Reformasi Di Indonesia)* (Yogyakarta: Pustaka Pelajar, 2015).

¹⁵ Titis Anindyajati, "Legal Policy Of Region Enlargements According to The 1945 Constitution : An Analysis to MK Decisions," *Jurnal Kajian* 18, No. 3 (2013).

¹⁶ Muhammad Ashsubli, "Dinamika Gerakan Pembentukan Daerah Otonom Baru Kabupaten Mandau-Riau," *Otoritas : Jurnal Ilmu Pemerintahan* 6, No. 1 (2016): 50, <https://doi.org/10.26618/ojip.v6i1.41>.

central government's fiscal capacity is narrow; 3) APBN is dependent; 4) The weakening of the central government's pan of control; 4) Threatened sustainability environment and 5) Increasing need for life.¹⁷ The BPK and Bappenas studies also found that many new autonomous regions whose financial performance is poor and experiencing limited human resources. Meanwhile, community services in some regions have also stagnated due to problems on the institutional, infrastructure, and HR sides.¹⁸

The phenomenon also occurs in various parts of the world, for example, in one of the African countries, Uganda. The Ugandan government vigorously carried out district expansion. Still, it was realized that national and local actors in the country were actively using the creation of new districts as a window of opportunity to pursue their interests. One of them is the electoral political interest in the country.¹⁹

Indonesia has also, in recent years, realized that the explosion of regional expansion brought excesses that were not good for the national interest, one of which was the increasing burden on the state budget. Therefore, a few years ago, efforts to organize autonomous regions began to be strictly enforced by the SBY government by issuing PP RI No. 78 of 2007, which stipulates the implementation of a moratorium on regional expansion and discourse on compiling a grand design of regional arrangements (Desartada).²⁰ But still, this moratorium in its development should have worked better. For example, in 2012, the government and the House of Representatives agreed to form a new autonomous region in several regions, one of which is Indonesia's 34th province, North Kalimantan.

The idea was finally poured into a Regional Arrangement Grand Design (Desartada) to organize and provide comprehensive new autonomous region formation guidelines. This Desartada is projected as a guide to government policy until 2025. Desartada is expected to be the controller and direction of the formation, merger, and adjustment of autonomous regions following the real purpose. Desartada provides guidance and signs regarding the feasibility assessment of the proposed regional expansion. The formation of new autonomous regions was studied from various strategic aspects. The area to be bloomed must also have a good plan and management of resources so that later it does not become a financial burden on the State, has economic potential, and can be predicted the possibility of local original income (PAD) so that it is expected to be able to provide public services and improve the welfare of the people in the area, and have minimal availability of facilities and infrastructure so that later in the early years it will be able to provide public services to the community.²¹

¹⁷ Helbra Rita Tenrini, "Pemekaran Daerah : Kebutuhan Atau Euforia Demokrasi ? Menyibak Kegagalan Pemekaran" (Jakarta, 2012). Accessed 30th September 2022 from <https://fiskal.kemenkeu.go.id/kajian/2013/11/14/145729605172231-pemekaran-daerah-kebutuhan-atau-euforia-demokrasi-menyibak-kegagalan-pemekaran>.

¹⁸ Andik Wahyun Muqoyyidin, "Pemekaran Wilayah Dan Otonomi Daerah Pasca Reformasi Di Indonesia: Konsep, Fakta Empiris Dan Rekomendasi Ke Depan," *Jurnal Konstitusi* 10, No. 2 (2016): 287, <https://doi.org/10.31078/jk1025>.

¹⁹ Tabaro Robert, Katusiimeh Mesharch, and Nadia Molenaers, "New District Creation in Uganda and Local Actors: Passive Recipients or Active Pursuers?," *Journal of Public Administration and Governance* 8, No. 2 (2018): 62, <https://doi.org/10.5296/jpag.v8i2.13191>.

²⁰ Mardyanto Wahyu Tryatmoko, "Menata Ulang Kebijakan Pemekaran Daerah Di Indonesia," *Masyarakat Indonesia: Jurnal Ilmu-Ilmu Sosial Indonesia* 40, No. 2 (2014): 191–209, <https://doi.org/10.14203/jmi.v40i2.117>.

²¹ Accessed 20th September 2022 from the official website Ministry of the State Secretariat https://www.setneg.go.id/baca/index/desartada_parameter_untuk_melakukan_penataan_daerah

Examining the Establishment of the New Autonomous Region of Papua from the Perspective of State Administrative Law

Pragmatically, the formation of a new province in Papua is perfect. It is considering that the two provinces in the Land of Papua are currently challenging to accommodate and provide optimal public services for the local community. The Papuan people often face constraints of limited access, inadequate infrastructure, and difficult geographical conditions. The consequence of it all is the lack of welfare and social equality in Papua because the range of government control over citizens is minimal. Therefore, expansion is a breakthrough that is quite progressive in facing these obstacles. Because the presence of policymakers (government) who are closer to the local community will stimulate various aspects of community life, ranging from socio-cultural, administrative, human resources, infrastructure, and other elements.

However, what needs to be highlighted is that the formation of new autonomous regions in Papua, which seems like lightning, leaves various problems from the establishment of regulations that are considered not the aspirations of indigenous Papuans, rules that reduce the indigenous rights of the Papuan people, rejection from the Papuan People's Assembly, to judicial *review* of the Papua Special Autonomy Law to the Constitutional Court. However, the presence of various problems that accompanied the formation of 3 (three) new autonomous regions in Papua Province has not become *aware* the government, where the lapse several times governments and DPR agreed to the shape of new autonomous regions in West Papua Province by projecting the presence of a new autonomous region in Southwest Papua Province.

One of the controversies in forming new autonomous regions in Papua is at the regulatory level. In its development, the revision of Law Number 21 of 2001 concerning Special Autonomy for Papua Province left much debate in the community. Regarding the expansion or formation of new autonomous regions, the revision of article 76 caused various reactions in the community because it was considered incompatible with the aspirations of the indigenous people.

Furthermore, article 76, section (2) of the amended Law on Papua explains that the Government and the House of Representatives can carry out regional expansion in Papua to accelerate the development, services, and welfare of indigenous Papuans. The article allows the government and the House of Representatives to have the authority to propose or expand the regions in Papua. In the previous rule, namely Law Number 21 of 2001, provincial expansion can only be carried out at the discretion of the MRP and DPRP. As a result of the changes, the Papua Special Autonomy Law became a legal legitimacy and a source of validity for the central government in forming a new autonomous region in Papua. This is also supported by the Constitutional Court Decision Number 47 / PUU-XIX / 2021, which clarifies the authority of the Government and the House of Representatives in regional expansion in Papua. The Assembly explained that the content of Article 76 section (2) still guarantees space for indigenous Papuans and does not conflict with the 1945 NRI Constitution. This also justifies the validity of the expansion of new regions (South Papua, Central Papua, Mountain Papua, and Southwest Papua) carried out by the Government and the House of Representatives.²²

Then the problem that arises is in Article 76, section (3) of Law Number 2 of 2021, which stipulates that in the formation of a new autonomous region of Papua, the results of changes, as in section (2), do not go through the stages of the preparatory area. The article needs to be viewed as

²² Constitutional Court of Republic Indonesia Decision Number 47 / PUU-XIX / 2021.

a questionable question of urgency. In fact, regarding regional expansion in Article 33 section (1) of Law Number 23 of 2014 concerning Regional Government mandates that development can be carried out through splitting or merging provinces or regencies/cities. This article explains *rigidly* that the area to be bloomed needs to go through the preparation stages for at least three years. It aims to provide an assessment and evaluate whether the new region is fully prepared to regulate and take care of local interests and not burden the parent region or the central government.²³

Of course, a revised article in the Papua Special Autonomy Law eliminates the provisions for the regional preparatory stages, causing anxiety about whether the new autonomous region existing in Papua will be optimal and ensure welfare. It is true that in law, there is the principle of *Lex Specialis Derogat Legi Generali* and *Lex Posteriori Derogat Legi Priori*, where if it is associated with the Papua Special Autonomy Law, the result of the changes gives the meaning that the special and new law overrides the general and old law. Although the efforts of the central government and the DPR in breaking the formation of new autonomous regions are seen as good, it still negates the preparation regions giving alarm that the new autonomous region establishment initiative in Papua is built on a pragmatic paradigm and without a comprehensive study. This is reasonable because the government wants to move the will quickly without proper research and urgency the policy of a revised article in the Papua Special Autonomy Law. The government examined the configuration of the relationship center, and the regions in Papua are patterned asymmetric decentralization.

The formation of primary areas is a very crucial stage in the process of forming new regions. The preparation area will later be assessed in several aspects of administrative law, such as aspects of requirements, namely basic requirements and administrative requirements. The basic needs include the essential condition of regional affairs and regional capacity. A new autonomous region will first become a preparatory region which lasts three years before developing independently. If successful, the central government can make the preparation area a new area. If not, it will be given a two-year test period to determine and assess whether the preparatory region will become a new autonomous region or rejoin the previous parent region.²⁴

The elimination of the preparatory area stage in forming the new autonomous region in Papua raises a big question as to what kind of models and indicators the government will use in expanding Papua Province later, considering that three new autonomous regions will be directly present in the expansion carried out. Suppose you go through the regional stages of preparation, of course. In that case, the government has indicators and references. Still, eliminating the preparation areas gives rise to the disposition of government policies in the expansion policy of Papua Province, which is based on the paradigm of pragmatism alone.

It is explicitly explained in Article 76 section (2) of the Papua Special Autonomy Law as a result of the amendment, that expansion is carried out to 1) accelerate equitable development, 2) improvement of public services and public welfare, 3) uplift the dignity and dignity of indigenous Papuans. But the central government's breakthrough in expanding without going through this preparatory area is out of its purpose as above. Gabriel U. Iglesias once expressed his opinion that

²³ Herman Kambuno, "Pemekaran Daerah Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *Legal Opinion* 5, No. 2 (2017): 1–16.

²⁴ Bagio Kadyanto, "Implikasi Pembentukan Daerah Persiapan Otonom Baru Dalam Bingkai Negara Kesatuan Republik Indonesia Untuk Peningkatan Kesejahteraan Rakyat Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *Aktualita (Jurnal Hukum)* 1, no. 2 (2018): 452–72, <https://doi.org/10.29313/aktualita.v1i2.3998>.

several important factors influence the implementation of regional autonomy, namely the existence of good implementing people, good performance, sufficient equipment, and qualified management and management.²⁵ These factors would be challenging to achieve in the newly autonomous region of Papua if the preparatory parts were abolished. Because the preparation area, in addition to providing time for the new autonomous region to meet all aspects of the requirements (basic and administrative), also offers the opportunity to improve essential factors in the implementation of regional autonomy ranging from good human resources, finances, and government equipment to qualified organization and management.

Furthermore, in the aspect of the pattern of central and regional relations, regarding the concept of authority relations between the center and the regions. The Constitution recognizes and respects local government's special units and indigenous peoples' unity. This has consequences for the implementation of asymmetric decentralization in Indonesia. Asymmetric decentralization includes political, economic, fiscal, and administrative decentralization, the nature of which does not have to be uniform but is considered regarding the reasons for the specificity and privileges of each region. This concept has been implemented in many areas of Indonesia, such as NAD, Papua & West Papua, DKI, and DIY.²⁶

So understand that this concept of asymmetric decentralization is the concept of relations between the central and regional governments that will be enforced in the new autonomous region in Papua. A form of asymmetric decentralization in Papua is special autonomy. Asymmetric decentralization is a deliberately designed attempt to accommodate the needs of the area concerned, which has a different pattern and distinctiveness from other regions meaning cultural, political, geographical, and historical background. Warsito Utomo explained that asymmetric decentralization is vital in transferring political authority and cultural diversity efforts.²⁷

Historically, the birth of special autonomy in Papua has been a middle ground produced by the government and the Papuan people for a long time. Ni'matul Huda said that the conception of Papua's special autonomy is like swimming against the current, and the current is a demand for independence. Meanwhile, special autonomy for Papua is intended to realize justice, the establishment of the rule of law, respect for human rights, acceleration of economic development, and improvement of welfare and progress of the Papuan people.²⁸ So as a consequence of this, later, new autonomous regions of South Papua, Mountain Papua, Central Papua, and Southwest Papua can have special authority and rights as owned by the provinces of Papua and West Papua. From the flow of special autonomy funds, balanced funds, the formation of MRP & DPRP, customary & cultural privileges, and government to benefits regulated in the Papua Special Autonomy Law.

From the aspect of financial relations, it is stated that there are consequences for the implementation of asymmetric decentralization, in terms of economic decentralization, in addition to the right for new provincial governments to manage regional revenues ranging from PAD, equalization funds, regional levy regional loans, regional wealth management and other legitimate

²⁵ Josef Riwu Kaho, *Otonomi Daerah Di Negara Republik Indonesia* (Jakarta: PT Rajagrafindo Persada, 2010). H. 66-70.

²⁶ Gunawan A Tauda, "Desain Desentralisasi Asimetris Dalam Sistem Ketatanegaraan Republik Indonesia," *Administrative Law and Governance Journal* 1, no. 4 (2018): 413-35, <https://doi.org/10.14710/alj.v1i4.413-435>.

²⁷ Ni'matul Huda, *Desentralisasi Asimetris Dalam NKRI: Kajian Terhadap Daerah Istimewa, Daerah Khusus Dan Otonomi Khusus* (Bandung: Nusamedia, 2014). H 61.

²⁸ Huda.

sources of income. What distinguishes it from different regions in Indonesia is the existence of special autonomy funds sourced from the central government for the government in the Papua region. As mandated by the new Law Number 2 of 2021, Otsus funds increased from 2% to 2.25% of the national general allocation fund. So it can be concluded that later than 6 (six) provinces in Papua will get special autonomy fund transfers to improve the development and welfare of the Papuan people.

In the institutional aspect, of course, it is closely related to the tool for organizing the new provincial government; the main point is the existence of the Regional Head (Governor), Provincial DPRD, and Regional Apparatus Organization. 3 (three) The instrument is essential in implementing a provincial government and developing districts and cities in its territory. As a representative of the central government assisted by regional apparatus organizations, one of the essential functions of the Governor has a crucial role in overseeing local government implementation. The function of the Provincial DPRD is no less important because it is a regional people's representative institution as an element of local government administration equipped with legislative, budgetary, and supervisory functions.²⁹

However, filling government instruments is optimal with sufficient time going through the preparation area. For example, the filling governors in South Papua Province, because the mandate of Article 9 section (1) of Law Number 14 of 2022 concerning South Papua Province mandates the filling of the governor's position through simultaneous Regional Head Elections, the consequence of this is that the presence of a definitive governor must wait until the end of 2024 to early 2025. Related regulations exist not only in South Papua Province; the Law on establishing Mountain Papua and Central Papua Provinces also regulates this.

Of course, this leaves some problems, a long enough period if you have to wait another 1-2 years, especially in other provisions regulated regarding the implementation of provincial government held by an Acting Regional Head proposed by the Minister of Home Affairs. The task mandated by the Law on forming a new province in Papua for the Acting Regional Head is also strategic, starting from implementing local government and establishing regional apparatus to facilitating the formation of an MRP. Even another example in Article 12 of Law Number 14 of 2022 concerning South Papua Province also stipulates that the establishment of the South Papua DPRD is waiting for the results of the 2024 election.

From the description of the formation of the new autonomous regions for the Provinces of South Papua, Central Papua, and Mountain Papua, several problems can be drawn that have the potential to be born. **The first** is the filling of the acting governor proposed by the Minister of Home Affairs, in this case, the potential for conflict of interest. This is because Papua is a particular autonomous region or the result of asymmetric decentralization, so the proposal of the acting governor must be based on the suggestions and recommendations of local indigenous peoples. **Second**, if the acting governor facilitates the formation of the MRP, there will also be a potential conflict of interest. Given the long period of filling the position, there is certainly the potential for MRP elections to be met with various interests. **Third**, the formation of the new Papua Provincial

²⁹ Rani Anggriani, "Tinjauan Yuridis Tugas Dan Fungsi Budgeting DPRD Provinsi Kalimantan Timur Dalam Pembangunan Daerah," *JOL(Journal of Law)* 5, No. 2 (2019): 1–31.

Parliament, waiting for the results of the 2024 elections, certainly reduces the principle of checks and balances in the implementation of new local governments, especially since there is a clause in the law on the formation of new provinces that states that before the provincial parliament is formed, the Acting Governor can compile the APBD for the first time.

Another problem that should be considered is the need for regional devices. Each new province requires about 1,000 new state civil apparatuses (ASNs). This is undoubtedly quite crucial, considering that the implementation of an excellent local government requires the availability of sufficient and qualified regional human resources. Because there is a preparatory area, the performance of the new autonomous region government has begun, and the fulfillment of ASN as a restricted device needs to be done immediately. Of course, in the recruitment process, it is necessary to have a priority scale for the best local sons/daughters to fill the ASN in the new provinces and remember to consider the regional financial aspects so that later they do not burden provincial finances.

Another thing that has become controversial is related to the readiness of new autonomous regions to welcome the 2024 elections and regional elections, again because without the regional preparatory stages and directly becoming a new autonomous region, it has implications for the stuttering of preparations for the formation of new provincial governments, especially regarding participation in the implementation of elections in the new areas. With the presence of new autonomous regions, the composition of the quota of legislators, senators, and constituencies (Dapil) will automatically change. Because of this, it is revising the Election Law agar later accommodates the holding of elections and regional elections in 4 (four) new autonomous regions and does not conflict with the constitution.³⁰

Some of the problems in the formation of a new province in Papua certainly provide a warning that the construction of the Papua new autonomous region needs to be evaluated and reviewed comprehensively. Geographically, the vast Cendrawasih Earth and the considerable poverty gap make forming the Papua new autonomous region a breakthrough good thing. But policies and government formations that seem lightning and without study can backfire at some point. Moreover, reflecting on the data on the failure of regional expansion discussed in the previous sub-chapter, it should not be that the noble goal of forming a new autonomous region in Papua ends up not being by the objectives.

Based on the problems above, several recommendations can be compiled regarding forming a new autonomous region on Cendrawasih Earth. **First**, the regional stages of preparation need to be implemented in the expansion of Papua province so that later the central and regional governments have clear indicators, analysis, and evaluation materials. With the preparation period of the government, it has a maximum time of 5 years; later, with the synergy of all parties, it is hoped that the new province will be fully prepared to become an autonomous region. And the formation of the new autonomous region was as successful as it was to be the goal of its construction.

Second, the government must immediately issue a regulation related to the Grand Design of Regional Arrangements (Desartada). As Gabrielle Ferazzi once explained, regional expansion is part of regional reform (territorial reform or administrative reform), namely to manage local

³⁰ Nikolaus Harbowo, Dian Dewi Purnamasari, and Fabio Maria Lopes Costa, "Empat Provinsi Baru Di Papua Butuh 4.000 ASN," *Koran Kompas*, 2022.

government units' size, shape, and hierarchy to achieve political and organizational goals.³¹ Article 56 of Law 23 of 2014 concerning Local Government has mandated preparing a grand design strategy for regional arrangements. As explained in the chapter of the article, Desartada contains a forecast of the number of regional expansions and is a reference for regional expansion. This Desartada rule has been delegated through government regulation (PP). However, until now, PP Desartada has yet to be immediately promulgated by the government. With PP Desartada, every assessment of regional expansion has a reference, and clear and specific guidelines, including the formation of the Papua new autonomous region.

Third, maximizing the Papuan public's participation in forming a new province of Papua. In its development, the formation of the Papua new autonomous region received various counter-responses from various parties, including the Papua Provincial MRP and the Papuan people. One of the problems is the lack of participation of indigenous Papuans and the expansion of not the community's aspirations. Of course, we realize that the process of forming four new autonomous regions in Papua does seem lightning, starting from the revision of the Special Autonomy Law in 2021 until finally the official formation of 3 new autonomous regions as a result of the expansion in 2022. The judicial review of the Papua Special Autonomy Law as a result of the changes further adds to the impression that the new autonomous region formation process has minimal participation. The participation of indigenous peoples is needed in every stage of the expansion plan, especially regarding regulations.

Regulation is essential because it contains norms and applies in general. So the rule of law must not only be top-down from the authorized institution to form a legal regulation, but it needs to be bottom-up, which means that the rule of law must be responsive and according to the community's wishes, especially for Papuans, who have special autonomy and are framed within the framework of asymmetric decentralization. Of course, the Papuan people need to be involved in their participation, especially in the preparation of regulations related to expansion, for example, in the revision of the Special Autonomy Law regarding development and the law on the formation of new regions.

So in the expansion policy, the central government must absorb all the people's aspirations and massively socialize. Because regional expansion is not a trivial matter, and the purpose of the expansion is for the local community. It reflected on many regional expansions in the past that were ineffective and fit for purpose. Expanding the area in Papua certainly requires a paradigm and handling in-depth and comprehensively. It is considering that the problems in Papua are very complex, ranging from geography, economy, politics, and security defense to separatist movements that still exist.

CONCLUSION

Several problems were found in forming 4 (four) new autonomous regions in Papua, ranging from the regulatory level to its implementation. In terms of regulations, Law Number 2 of 2021 provides legitimacy for the central government (Government and DPR) to propose expansion in Papua and eliminate the regional preparatory stages. However, eliminating primary areas caused

³¹ Suraji, Putra Ahmad Bakri, and Embi Muhammad Ali, "The Development Of Regional Expansion Apparatus Resource Placement In Indonesia," *RJOAS*, 2, No. 74 (2018): 170–78, <https://doi.org/DOI> <https://doi.org/10.18551/rjoas.2018-02.10>.

anxiety, especially about the indicators the government used to form the new autonomous region in Papua. Meanwhile, in the pattern of central and regional relations, new autonomous regions in Papua apply asymmetric decentralization from the aspect of authority. Therefore there are distinctive patterns, such as the provinces of Papua and West Papua. The new provinces will also get a flow of special autonomy funds from the financial part. In terms of institutions, there are several problems, such as the issue of a definitive governor that will only be available after simultaneous elections at the end of 2024. This makes the vacancy filled by the Acting Governor, proposed by the Minister of Home Affairs, not on the proposal of the local community. What is feared is the occurrence of conflicts of interest, considering that the Acting Is given crucial powers such as facilitating the formation of the MRP and forming the first Raperda without the DPRP, which is formed from the results of the 2024 elections. There is also a need for 4,000 ASNs. In welcoming the 2024 simultaneous elections and regional elections in the Papua new autonomous region, the government needs to revise the Election Law to accommodate the provisions of the constituency, the quota of legislators-senators to the establishment of election organizing institutions. This article also provides recommendations and ideas for the formation of the new autonomous regions in Papua as follows: 1) The implementation of primary areas in the process of forming the Papua new autonomous region; 2) The government immediately issued Government Regulation of Desartada; 3) Maximizing the participation of indigenous Papuans in the establishment of four new autonomous regions in Papua (stages of regulation and implementation).

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